

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, August 4, 2004, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Eugene Carroll, Gerry Krieser, Roger Larson, Dan Marvin, Melinda Pearson, Mary Bills-Strand, Lynn Sunderman and Tommy Taylor; Marvin Krout, Ray Hill, Mike DeKalb, Ed Zimmer, Brian Will, Greg Czaplewski, Tom Cajka, Becky Horner, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held July 21, 2004. Motion for approval made by Marvin, seconded by Krieser and carried 8-0: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand and Taylor voting 'yes'; Sunderman abstaining.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

August 4, 2004

Members present: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 04038.**

Krieser moved to approve the Consent Agenda, seconded by Larson and carried 9-0: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'.

Note: This is final action on Special Permit No. 04038, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

SPECIAL PERMIT NO. 04036
VILLAGE POINTE AT CAPITOL BEACH
COMMUNITY UNIT PLAN
ON PROPERTY GENERALLY LOCATED
AT PIER 2 AND LAMONT DRIVE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 4, 2004

Members present: Carlson, Carroll, Marvin, Taylor, Sunderman, Larson, Pearson, Krieser and Bills-Strand.

Staff recommendation: Conditional approval.

Ex Parte Communications: Mary Bills reported a telephone call from John Huff on behalf of the Capitol Beach neighborhood. Pearson stated that she also talked with Mr. Huff as president of the neighborhood association.

Tom Cajka submitted six additional letters in opposition from surrounding neighbors including the Capitol Beach Neighborhood Association and a letter signed by eight property owners in opposition. The main concerns are parking problems on Lamont, traffic congestion on Lamont, cars that block the sidewalks, compatibility and safety due to traffic congestion and speeding traffic on Lamont.

Proponents

1. Lyle Loth of ESP testified on behalf of **Cherry Hill Homes**, the developer. Cherry Hill Homes is just completing construction of 18 detached single family homes on small lots in the Vavrina Meadows area on South 14th Street. He showed photographs of this project, showing that the units are served by driveways and garages in the rear. The front porches, windows and doors face the street providing good visual effect on the streetscape. The success of this project in Vavrina Meadows has brought Cherry Hill to look for the same opportunity in other locations. This proposal will create 18 single family lots where 13 exist today. The developer intends to sell these properties for owner-occupancy. He does not plan to retain any for rental. There are four different floor plans that will be offered, each proposing rear entry garages and driveways accessed by way of an alley at the rear of the lots. The street side views will be more visually appealing. This will minimize the need for street parking with four off-street parking spaces at the rear of the home. This will help the traffic on Lamont with fewer driveways accessing the street.

Loth pointed out that as platted, there could be 13 driveways on Lamont. There are only two access points in this project. Loth agreed with the staff report and conditions of approval, except Condition #1.3, which requires the submittal of a recreation plan. The developer had requested a waiver of this condition because with the relatively small scale of the project there

is limited opportunity to provide much in the way of a recreation plan. The Lincoln Saline Wetland Nature Center is across Industrial Drive to the north and provides opportunity for hiking and fishing. Outlot B will be an open space that functions as a buffer between the railroad and the development and as a drainageway. It also has an emergent saline wetland.

Loth also pointed out that the staff report identifies nine areas where this project is in conformance with the Comprehensive Plan, i.e. maximize use of existing infrastructure; encourage different housing types and choices, including affordable housing; encourage infill development; the property is identified as urban residential; preserve mix of housing types in older neighborhoods; encourage pedestrian orientation with parking at rear; require new development to be compatible; encourage a mix of housing types—single family, duplex, attached, etc.; and infill respecting street patterns such as rear parking, front porches, windows and doors on street side.

Loth noted that the common theme of the opposition is the complaint about the long row of duplexes along the east side of Lamont Drive. The project that contains these duplexes is a permitted use in the R-3 district. He recognizes that the residents would prefer to see single family of the size and character of homes that back onto the lake, but the only development that has occurred on the east side of Lamont are the duplexes. The balance is vacant. This suggests that the market place does not support construction of the larger single family homes. If this application is denied, this area would be developed as duplexes, much as it is on the east side of Lamont Drive. He believes that 18 duplex lots are available, plus a 19th single family lot at the very north end. This could be done “by right” as long as all of the conditions of the R-3 zoning could be met and no special permit would be required.

Pearson inquired whether 13 duplexes could be built? Loth indicated that 13 duplexes could not meet the area requirements because that would require 80' of frontage and 10,000 sq. ft.

Marvin inquired whether duplexes would include a requirement for the recreation plan. Loth did not believe it would.

Opposition

1. John Fagerberg, 711 Lamont Drive, testified in opposition. His home is directly across from where the alley will be located in this proposal. His issue is that all of the traffic will be channeled out directly in front of his home. It is a very dangerous street with a lot of traffic. No one has ever paid any attention to speed limits or parking. There has been no enforcement. He is concerned about his property values and his way of life. There are all kinds of illegal parking violations with the duplexes. His biggest concern is all of the egress from the alley right in front of his house. How will they do the snow removal? He does not believe this is affordable housing.

Pearson clarified with Fagerberg that this proposal is for single family homes. Fagerberg acknowledged that he understood, but they are funneling all of the traffic in front of his house, and he does not think that is fair. He wants to be able to sell his house someday.

2. David Hahn, 501 Pier 2, at the corner of Pier 2 and Lamont Drive, testified in opposition.

- He is not sure that the people making the application actually even own the property.
- He is concerned about the parking and the safety of this additional development going from 13 lots to 18 lots. There is currently a terrible situation on Lamont Drive because of the lack of enforcement and the duplexes that were built. He has observed that at least every other driveway is filled with cars which block the sidewalk, which drives the pedestrian traffic into the street. Now they are proposing to go from an area plotted for 13 lots to an area plotted for 18 lots. The idea that somebody with four cars will all park in the alley is not reasonable. There will simply be more of the same and it will compound the problem that already exists because of previous decisions by the Planning Commission and the City Council. There are young children who are forced out into the street even now. The postal service is generally unable to deliver a fair amount of the mail because of the cars in the street.
- He is also concerned about the stormwater retention issue. The property owners have spent a substantial amount of money in assessments for nine years to clean out the lake. He believes this project will drain into the lake and he does not believe this is a fair way to distribute the burden of stormwater runoff. He believes this proposal is different than the development referred to by the applicant (Vavrina Meadows) because the grade is different. This is flat. There is no grade to speak of. If they are intending to illustrate the same view from the street, there is going to have to be a lot of fill brought in, which then develops complicating issues with regard to stormwater drainage.
- This is not an older area. The road from Lamont across the railroad to Industrial Boulevard was just opened two years ago and now funnels a great part of the traffic. This is not an older neighborhood and there has been no proven need for this change from an economic aspect.
- If this application is approved, there should be no parking in front of these homes.

Fagerberg submitted pictures and a petition signed by 12 neighbors.

3. Ruth Davidson Hahn, 501 Pier 2, testified in opposition. They bought their home in 2000. They chose to live at Capitol Beach because she liked the community and her understanding was that they would be single-family dwellings and they are not. How can it be guaranteed that this new development will be single family or that they would not be rentals? She wanted to live in a nice community and her house is an expensive home. She fears that the new development would be similar to what is across the street, which would not be an improvement to the neighborhood.

4. Ann Willet, 701 Pier 2, testified in opposition. Her concerns are parking and access. By increasing the number of buildable lots from 13 to 18, assuming 4 cars per home, that is 20 additional cars going through her neighborhood trying to get to their homes. She does not understand the process. She does not agree that a decision should be made to approve this application because the alternative could be worse or could be duplexes. With regard to the market place, her home was built five years ago, so she believes there are many considerations that go into determining a market place for a neighborhood, and time is certainly one of the variables. Since this is a fairly new community, she does not believe the market place has been determined.

5. Karen Kuhn, 725 Pier 3, testified in opposition. With regard to waiving the recreation plan, there are so many children playing in or in close proximity to the streets. She is afraid for their safety. The NRD is not the answer. They really need a children's recreation area.

6. Sue Thelen, 500 Pier 1, on the corner of Lamont and Pier 1, directly across from the duplexes, testified in opposition. She recently put a fence on the south side of her yard and in the process she has been outside a lot and she has heard cars screech attempting to avoid children running out in the street or across the street. This is because of the speed and the number of cars parked on the street. From Pier 1 to the railroad, parking is permitted on both sides of the street. Parking on only one side of the street should be continued. She was told that if this application is denied, the area could only be built as single family homes. Can they put duplexes on this property if this proposal is rejected? The neighbors would prefer single family, but would prefer 13 rather than 18.

Staff questions

Pearson inquired whether duplexes could be built by right. Cajka stated that the R-3 zoning allows single family and attached two-family (duplexes) as long as they meet the minimum lot area, which would be 10,000 square feet for a duplex and 80' of average lot width.

Pearson asked staff to discuss the grading and detention issues. Dennis Bartels of Public Works stated that the previous plat that was approved did not require stormwater detention on existing lots. The preliminary plat was approved in the late 70's. The conditions of that plat required additional grading information and they provided a plan that showed existing grades. The previous plat created the lots. It drains to the rear of the lots and then the water along the

railroad tracks drains generally towards the north and towards the saline wetlands and Oak Creek. The only water that potentially could get back into the lake is anything that gets back to Lamont Drive. Anything that drains from the rear drains to Oak Creek. The water will drain to the wetlands. Once it crosses Industrial Lake Drive towards the north end, it stays on public ground and drains to the wetland and gets to the creek. It doesn't affect other private property. With the small size of this development, the detention would be minimal and Bartels didn't see much public or private benefit to require detention.

Carlson asked staff to discuss the traffic entering and exiting. Bartels believes that one would have to assume that it would be more cars than the typical driveway. You could assume that roughly half the traffic will head towards Industrial Lake Drive and some of it will head back towards Capitol Beach. He agreed that there would be an increase of traffic headlights that would shine into the gentlemen's yard (Fagerberg). You can assume 8-10 trips per day off of a single family unit. There could be 180 trips and at least half of them would be exiting at each exit.

Marvin inquired about the alleyway exit onto Industrial Lake Drive. It looks like the distance between that alley and the corner is about 100'. Is that enough sight distance? Bartels indicated that it would meet the requirement for a driveway location. The city's design standards require at least 120' of separation between street intersections. If it is a driveway, it is not truly an intersection, but if it was a t-type intersection, the minimum is 55' from the curb line, to which this application complies. Bartels believes this application complies with the sight distance requirements.

Larson wondered whether there is any way to slow the traffic down on Lamont Drive. Bartels stated that by policy, Public Works has not used the speed bumps because they cause other problems. Sometimes the extra driveways and cars on the street slow the traffic down. Traffic just tends to go faster when you don't see anything on either side of the street.

Carroll inquired how big the recreation area would need to be. Cajka advised that the design standards provide that most recreational facilities would consist of a tot lot and some playground equipment. Ray Hill of Planning staff also offered that the design standards indicate that a recreational facility is to serve the occupants of the community unit plan. The staff usually leaves that up to the developer to work out with the Parks Department to determine what type would be required. There is no minimum lot area requirement in the design standards. It is based on the number of units and the type of occupancy.

The height requirement in R-3 is 35'.

Pearson inquired whether the staff in any way explored with the developer connecting the drive across from the drive in Pier 2. Bartels stated that the staff did not discuss driveway locations with the developer. There are probably other locations that would work. The downside to

putting it in the middle is creating a dead-end, but a different driveway location could potentially work. Across the street on the west side would be the logical place. Cajka advised that they did talk about moving the access and he believes the developer is agreeable to moving the alley access so that it is across from Pier 2.

Marvin was curious about the density calculations. Is Outlot B used in calculating the maximum density? Cajka stated that it was included. Marvin noted that Outlot B is a long sliver that is fairly unbuildable, yet it is still used in the density calculations.

Krieser inquired whether it could be required that there be parking allowed on only one side of the street. Bartels indicated that Traffic Engineering has a policy procedure for that. If the owners petition for it, it is possible. However, if you don't allow parking people will tend to feel comfortable driving faster. Krieser then inquired about the other side of the existing duplexes. Bartels stated that the property owners would have to agree to it.

Taylor inquired further about the recreational facility. Cajka explained that it would be an area labeled for recreation (probably on an outlot) and the recreation equipment would be based on the type of individuals that would be living in the units. Sometimes the recreation plans have been allowed to be passive type of recreation where it might be just a gazebo and a sitting area. Tot lots with playground equipment vary from project to project based on the owners. The recreation plan is a requirement of the special permit for a community unit plan.

Pearson inquired why it needs to be a community unit plan. Cajka explained that the CUP is basically to allow smaller lots with single family homes. The proposed lots do not meet the R-3 average lot width and lot area, so that is a reason for the community unit plan, as well as the rear drive and private access.

Ray Hill suggested that if the property owners all went together and formed some type of association to allow for common access across their property, this proposal could probably be done without a CUP, but their individual lots would all have to meet the R-3 single family lot requirement of 6,000 sq. ft.

With regard to the applicant not being the property owner, Hill stated that the Planning Department received an ownership certificate that indicates there are two owners. The applicant will need to respond.

Response by the Applicant

Loth explained that the applicant is a contract purchaser of the property. The title has not changed but he does have a contract to acquire the property.

Loth also acknowledged that the applicant would have no problem moving the alley access out to Lamont. It does create a dead-end at the very south end, but the Vavrina Meadows project has the similar situation. Loth pointed out that if the project is developed as 13 lots as platted today, there would be 13 driveways out to the street, with front parking and front access, and 13 more opportunities to block the sidewalk. By right, this property could be administratively replatted and there could conceivably be 18 or perhaps 19 driveways out to Lamont Street.

Marvin confirmed that the applicant would be willing to move the drive access to Lots 14 and 13. Loth stated that they would line it up with Pier 2.

Marvin believes that Outlot B has substantial amount of space for the recreation facility. Lyle does not believe they could put the recreation facility on Outlot B. There is a sanitary easement on Outlot B and it is a drainage ditch. He is not sure where they would put the recreation area. The first obvious location would be Lot 1, but having a playground right next to a busy street does not make the most sense. They would have to perhaps consider taking one of the lots away, and only doing 17 single family lots, in order to do the recreation plan.

Carroll inquired whether the homeowners association would own Outlots A and B. Loth stated that the association will own Outlot A. Outlot B will probably be maintained in the present ownership. The reason Outlot B is included is because it was owned by the same entity and the area was needed in order to meet the minimum area requirements for a CUP in this zoning district.

Carroll asked for further explanation of the elevations on the residences. Loth explained that the alley will be lower than the street. The minimum floor elevation has to be 1' above the 100-year floodplain elevation. There will be no basements and the first floor elevation will be 1' above the floodplain. The houses across the street are bound by the same floodplain requirements. There will be no long stairway to the buildings.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

August 4, 2004

Marvin moved approval, with conditions, seconded by Carroll.

Marvin moved to amend to move the driveway down to between Lots 13 and 14 so that it is opposite of Pier 2, seconded by Pearson.

Carroll asked whether Marvin would accept a friendly amendment to require that the centerline of Pier 2 would be centerline of the alley. Marvin and Pearson agreed. Motion to amend carried 9-0: Carlson, Carroll, Marvin, Taylor, Sunderman, Larson, Pearson, Krieser and Bills-Strand voting 'yes'.

Taylor moved to amend to delete the requirement for a recreation plan (strike Condition #1.3), seconded by Bills.

Marvin stated that he was out at this site today and he believes this is far and away better than what he saw when he looked down the street. If we keep the recreation plan requirement, maybe it would knock the development down a unit. He believes it is a little bit dense because they are using Outlot B in the calculations for density. It is not a fair way to do it because it is a strange piece of land. He will oppose the removal of the requirement for the recreation area.

Cajka clarified that the entire boundary of the CUP is used in calculating the density. Based on those calculations, 21 units would be allowed and they are showing 18 units. Marvin asked what the density would be if Outlot B was not considered. Cajka had not calculated this scenario. Carroll does not understand how Outlot B can be included in the CUP if the ownership is not going to change. Cajka stated that both owners could be part of the CUP. Rick Peo of the City Law Department clarified that all property owners will have to sign the letter of acceptance to be bound by the CUP. The ultimate issue is who signs the letter of acceptance agreeing to the CUP. Both the owner of Outlot B and the owner of the remaining property will have to agree to all the conditions. Outlot B would have to sign and be part of the CUP.

Carroll does not believe the recreation area should be waived. He saw the kids playing in the street.

Bills-Strand pointed out that the recreation area will only serve these 18 homes and not the duplexes.

Motion to amend to delete Condition #1.3 failed 2-7: Taylor and Bills-Strand voting 'yes'; Carlson, Carroll, Marvin, Sunderman, Larson, Pearson and Krieser voting 'no'.

Carlson stated that he appreciates the schematics submitted by the applicant. He agrees that this development is creating some additional density but they are attempting to do better design and better layout, and he thinks this is a good direction. The garage forward facing duplexes cause a lot of problems. We need to give some consideration to the good design and appropriateness of the site.

Marvin also stated that he appreciates the development and he knows that the duplexes are what got the neighbors worked up. Maybe we need to work on some kind of design standard that looks at these duplexes to accommodate some off-street parking, etc. He believes this proposal is an answer to that and creates some density. You are not going to get \$300,000 to \$400,000 homes built on this property with there being a back yard view of a bunch of warehouses. This particular property back yard view is railroad tracks and warehouses and he thinks this proposal is an appropriate compromise for what can go into that area.

Taylor agreed. He believes the homes will improve the area.

Motion for conditional approval, as amended, carried 9-0: Carlson, Carroll, Marvin, Taylor, Sunderman, Larson, Pearson, Krieser and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 04034
FROM AGR AGRICULTURAL RESIDENTIAL
TO R-3 RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
AT SOUTH 66TH STREET AND HIGHWAY 2.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: August 4, 2004

Members present: Carlson, Carroll, Marvin, Taylor, Sunderman, Larson, Pearson, Krieser and Bills-Strand.

Staff recommendation: Approval.

Ex Parte Communications: None.

The Clerk announced that the applicant has requested an additional four-week deferral. Carlson moved to defer with continued public hearing and administrative action scheduled for September 1, 2004, seconded by Marvin and carried 9-0: Carlson, Carroll, Marvin, Taylor, Sunderman, Larson, Pearson, Krieser and Bills-Strand voting 'yes'.

STREET & ALLEY VACATION NO. 03023
TO VACATE THE NORTH 10' OF "Q" STREET,
GENERALLY LOCATED AT N. 8TH STREET AND "Q" STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 4, 2004

Members present: Carlson, Carroll, Marvin, Taylor, Sunderman, Larson, Pearson, Krieser and Bills-Strand.

Staff recommendation: A finding that the vacation is not in conformance with the Comprehensive Plan.

Ex Parte Communications: None.

Proponents

1. **Paul Ahrendt**, 940 Old Cheney Road, and owner of the Tool House that occupies the property, testified in support. This business has operated in this area for 27 years. The purpose of this request is to be able to own and use this right-of-way. Ahrendt believes that this entity is entitled to use this area as much as the vacated right-of-way granted to the

Haymarket parking garage recently. He believes his request should be treated the same way. However, Ahrendt learned quickly that he couldn't be treated the same as the city because the law doesn't allow it.

The purpose of this request is to use the right-of-way to demo a trailer. Also, from time to time, the Tool House will have events and they use that area to move people around. The important property is the property that is in front of their east building; the second important property is the property in front of their dock; and the third important property is maintained as a sidewalk and leased from the city. Ahrendt had been told he could get a permit for this but no one with the city has been able to find a permit that would let them use this property for weeks or months at a time.

There was no testimony in opposition.

Staff questions

Carlson noted that the staff analysis does talk about a permit to use the right-of-way. What is the problem? Greg Czaplewski of Planning staff stated that based on the revised proposal to use this right-of-way area, they are suggesting a couple of different uses. To demo new products or to do some kind of vendor showing would not be allowed under any of the existing license provisions because any of these uses would have to cross the public sidewalk. There may be additional maneuvering space needed that would cause conflict with pedestrians. If they wanted to use the area as a sidewalk sale area with tables and loose merchandise, that type of permit would be available through the City Clerk's office. A sidewalk café type license would not work in this situation.

Ahrendt pointed out that the distance between the area that they are asking to be vacated to the curb is the same amount of distance as the parking garage distance previously approved. They could have trucks that back into the dock now that will be 10' past the curb line. From a business owner standpoint, he does not understand the issue of safety when the other right-of-way was vacated.

Carroll inquired about vacating the right-of-way right in front of the dock area only. Czaplewski indicated that the staff position would be the same if their intention is to park vehicles in that area. Carroll believes there are probably trucks parking on that dock area to the street now when they are loading or unloading at the building. Czaplewski did not know how they actually use the dock space. Carroll inquired whether it is illegal for them to park on the 10' right-of-way section. Czaplewski stated that it is illegal, and he understands that the Police Department has issued citations to vehicles that have been parking in this 10' area.

Pearson wondered whether the staff would support the vacation with a restriction prohibiting the use for parking. Czaplewski stated that the staff's preference would be not to vacate any of the area.

Taylor asked whether it would be possible to vacate the area between the sidewalk and the building, leaving the sidewalk for pedestrian traffic, but utilizing the area between the sidewalk and the building. Czaplewski believes this would be the portion that is not paved now. The sidewalk in this area extends from the face of the building to the curb. The dock area is between the east and west buildings. It is public right-of-way up to the face of the building. They can be ticketed for obstructing the private right-of-way just like a car that hangs over the sidewalk in a residential area.

Carlson believes there are several examples of circumstances in the Haymarket where business owners have needed to make use of the right-of-way where we have made accommodations without vacating the property. He believes there are some additional alternatives. Aren't there circumstances where we have not sold the land? Czaplewski acknowledged that initially, the staff thought there were some potential avenues for licenses or permits to use the right-of-way available, but the proposed use would not fall into any of the license provisions available. It has been discovered that there are no available avenues for the kind of use they want to do; that is, to extend the floor area of their shop for continuous display of large items that might not display well inside the store, or to have vendor trucks pull up and demonstrate products.

Taylor likened it to a sidewalk sale. Czaplewski did not know what authority there is for sidewalk sales, and Mr. Ahrendt can check with the City Clerk to see if his proposed use falls under that definition.

Rick Peo of the City Law Department cautioned that the public right-of-way is designed to handle either pedestrian or vehicle traffic. The city has two different types of ordinances that permit occupancy of public space--above or below the surface and underground cable. Neither of these interfere with the use of the street. Unfortunately, some exceptions have been granted, primarily for non-commercial activities, such as a stairway from second floor to the street. The only real commercial exception is sidewalk cafés, and that is specifically authorized by state law. Our goal for the city is to be restrictive on the use of public space. The street is for traffic and there should not be permanent exceptions for a commercial use.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

August 4, 2004

Pearson moved to find the proposed street vacation to be in conformance with the Comprehensive Plan and to approve the vacation of the street with the restriction that the property is not used for parking, seconded by Taylor.

Pearson commented that this is a business that has been in the Haymarket longer than the Haymarket has been there. A tool company probably would not locate in this area today. But they are there now and that's terrific. We are not talking about a driveway or a street, but the area between the public sidewalk and the building. We are not talking about the sidewalk or

the street. We are talking about the area behind that where we allow people to sit at tables and drink coffee and display retail. She thinks it is a great business and this is one of the multi-purpose things that we have in the Haymarket.

Larson agreed. We need to give some consideration to the fact that this business has been there all this time and it is a real asset to the Haymarket neighborhood. To deny this would really restrict the use of that property for this enterprise. We need to bend a little bit on this one.

Taylor believes that safety in this situation is a very minor issue, and he does not believe making an exception is going to cause an outcry from others for the same exception because this is a very unique situation.

Bills-Strand wondered whether this 10' vacation would increase the size of the building envelope. Peo suggested that the city could restrict it in the deed, but there are no setbacks for buildings so they could build up to the property line. Bills-Strand stated that she does not want to increase the size of the building envelope without putting a caveat on the deed.

Bills-Strand moved to amend that this vacation does not increase the size of the building envelope and that the vacated property is to be used for purposes of display only, seconded by Pearson and carried 9-0: Carlson, Carroll, Marvin, Taylor, Sunderman, Larson, Pearson, Krieser and Bills-Strand voting 'yes'.

Carlson stated that he will vote against the motion. He believes there is substantial argument for setting a precedent here. There have been many circumstances in the past, such as when Lazlo's wanted to put in a fire escape. There were months of discussion and he believes the city ended up renting the property to them. There is a handicap ramp near Ruby Tuesday's with a similar circumstance. He will lean on the report of the Historic Preservation Commission. Yes, the business has been here since before the Haymarket, however, there are different circumstances now that the Haymarket is there. We have created a circumstance where pedestrian motion and access is important. Maybe the city has been derelict in getting the paving in and that makes it look like it's not a big deal. We saw a special circumstance with the parking garage where it was designed to accommodate that café use. It sets a bad precedent, and it is not in the best interest of the pedestrian motion.

Carroll agrees that it is a bad precedent to set. Yes, the owner is a very good owner and person, but we should not give away the right-of-way. He agreed that the city, in negotiating the agreement on the parking garage, gave away something they should not have, but we do not need to start setting a precedent in giving away things the city acquired a long time ago. He is hopeful that there is some kind of permit to allow the applicant to use the space.

Marvin agreed. If we give away right-of-way, it should be for a public benefit as opposed to a commercial benefit.

Larson recognizes that the dining areas are allowed by state law, but he thinks it looks foolish to compress a sidewalk there by the Fireworks and Lazlo's restaurants to allow sidewalk dining but not allow this business to use the public right-of-way. He believes it is inconsistent.

Pearson does not understand what Carlson meant about the exception for Ruby Tuesday's. Carlson believes it was an area on the north where a handicap ramp was accommodated.

Bills-Strand believes the difference with the sidewalk cafe's is that the city did not sell the right-of-way to them. It is leased to them for that purpose rather than giving away the right-of-way. Peo agreed. The sidewalk cafe or any license permits use of the right-of-way and that permit can be revoked at any time that the city feels the right-of-way is needed back. In fact, the city only gave the parking garage an easement as opposed to selling the land.

Bills-Strand inquired whether there is a way to lease or rent to accommodate a business. Peo responded that any street that is vacated is vacated upon condition that the city retains title, and then the city determines whether to sell the property. An easement could be granted as opposed to conveying fee title. It would be nice to condition that it not be sold. If we are only looking at an easement it should be valued as such.

Pearson inquired about the dock area being used in other retail areas that go right up to the sidewalk. Peo believes a lot of the businesses own the dock. A lot of the dock is owned privately but some of them might have sidewalks to them. There are buildings that encroach into the public right-of-way.

Carroll moved to amend that the vacated property not be sold and used for easement purposes only, seconded by Marvin and carried 9-0: Carlson, Carroll, Marvin, Taylor, Sunderman, Larson, Pearson, Krieser and Bills-Strand voting 'yes'.

Marvin thinks there is a big difference between a sidewalk cafe and someone demonstrating power tools on a curb in a mostly retail area.

Motion for a finding of conformance with the Comprehensive Plan and to approve the vacation, as amended, carried 7-2: Carroll, Taylor, Sunderman, Larson, Pearson, Krieser and Bills-Strand voting 'yes'; Carlson and Marvin voting 'no'. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 04016,

WHISPERING CREEK,

ON PROPERTY GENERALLY LOCATED

AT SO. 112TH STREET AND OLD CHENEY ROAD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 4, 2004

Members present: Carlson, Carroll, Marvin, Taylor, Sunderman, Larson, Pearson, Krieser and Bills-Strand.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Commissioner Sunderman was absent for the public hearing on July 21, 2004; however, he advised the Commission that he has read the staff report and the minutes and viewed the public hearing on-line.

Proponents

1. Kent Seacrest appeared on behalf of the applicants. This is a proposal for 50 acreage lots. The property is already zoned AGR and it is shown in the Comprehensive Plan for low density development which allows acreages. It is not in Tier I. There are existing acreages to the south and west with rural water district and paved road. There was no neighborhood opposition at the public hearing two weeks ago.

Seacrest pointed out that he and Commissioner Carlson have different opinions as to the Mayor's letter of June 11, 2002. Seacrest does not believe that letter required that this applicant wait for the three acreage studies, but rather that this application could be judged on the existing Comprehensive Plan at that time. The applicants did make a three-pronged effort to do build-through, while it is not legally required to do build-through. Seacrest showed maps of the efforts they have made to do a build-through scenario at a cost of \$12,000. The rural task force concluded that the build-through proposal required too much grading and cutting. This is one of the more hillier sites. Sites around the edge of the city that have been graded to do urban lots have knocked down a lot of the topography and made it pretty flat. Then we have to build future roads and we normally build streets lower. Seacrest demonstrated why the first attempt was determined not to be viable.

Seacrest then demonstrated effort #2, which also cost \$10,000 to \$12,000, with one-acre lots and no lagoons. DEQ discouraged them from discharging into the creek. To do this scenario, the lagoon was very, very large. Looking at the cut and fill, it was going to average over \$8,000 more per lot than a regular lot.

The third effort (this plat) shows the future utility layouts. This application gives the easements for the utilities. More importantly, the applicants want to now propose more easements so that the city can pull future sewer to each of these lots and upstream neighbors. Seacrest submitted a motion to amend to allow future public sewers to come through this area and if special assessment districts are necessary, the owners are not allowed to protest.

Seacrest suggested that the Comprehensive Plan language on build-through had three premises: 1) ability to pull the utilities through; 2) not protesting special assessment districts; and 3) to put future property owners on notice that public utilities could some day come through. The motion to amend accomplishes these three premises, even though there are no

legal requirements to do so. Seacrest pointed out, as is pointed out in the staff report, as long as the proposal meets the conditions of a preliminary plat, this is a ministerial action that should be approved.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

August 4, 2004

Larson moved to approve the staff recommendation of conditional approval, with the amendments proposed by the applicant today, seconded by Krieser and carried 6-3: Carroll, Taylor, Sunderman, Larson, Krieser and Bills-Strand voting 'yes'; Carlson, Marvin and Pearson voting 'no'. This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 day of the action by the Planning Commission.

There being no further business, the meeting was adjourned at 3:15 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on August 18, 2004.